

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

CHRISTOPHER FOSTER,

Petitioner, : Case No. 1:15-cv-713

- vs -

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

RONALD ERDOS, WARDEN,
Southern Ohio Correctional Facility,

Respondent.

REPORT AND RECOMMENDATIONS

This habeas corpus case is before the Court on Petitioner's Motion for Rule 60 Relief, filed March 7, 2025 (ECF No. 202). As best the Magistrate Judge can tell, Petitioner seeks relief from judgment in this case on the basis that the trial transcript, filed as part of the State Court Record and served on Petitioner on the Court's Order (ECF No. 10) does not include the closing arguments at trial. The Motion for Relief from Judgment should be denied for the following reasons:

1. It is grossly untimely. Judgment was entered in this case on July 24, 2017 (ECF No. 82). Under Fed.R.Civ.P. 60(c), motions for relief from judgment for the kind of reason Petitioner raises must be filed within one year of judgment. The instant Motion was filed more than seven years after judgment.
2. The State Court Record as filed contained those portions of the record from the state court that Respondent judged were necessary to decide this case (See Habeas Rule 5). If Petitioner believed the transcript of the closing arguments was necessary to a decision, his

time to seek an expansion of the record was when the record was filed and before the Court made its decision. In any event, the Court did not rely on the closing arguments because the Court also did not have them.

Conclusion

Based on the foregoing analysis, the Magistrate Judge respectfully recommends the Motion for Rule 60 Relief be denied. Because reasonable jurists would not disagree with this conclusion, it is also recommended that Petitioner be denied a certificate of appealability and that the Court certify to the Sixth Circuit that any appeal would be objectively frivolous and should not be permitted to proceed *in forma pauperis*.

March 28, 2025.

s/ Michael R. Merz
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6, but service is complete when the document is mailed, not when it is received. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. #